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No. 90-1577

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

R.L.C., A JUVENILE MALE

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether, in sentencing respondent as a juvenile delinquent pursuant to 18 U.S.C. 5037(c)(1)(B), which provides that the sentence imposed on a juvenile may not extend beyond "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult," the district court was required to apply the Sentencing Guidelines to determine "the maximum term of imprisonment."

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 915 F.2d 320. The opinion of the district court (Pet. App. 15a-16a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 12, 1990. A petition for rehearing was denied on December 18, 1990. Pet. App. 17a. On March 12, 1991, Justice Blackmun extended the time

within which to file a petition for a writ of certiorari to and including April 17, 1991. The petition was filed on April 11, 1991, and was granted on June 24, 1991. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. The Juvenile Delinquency Act, 18 U.S.C. 5037, provides, in part, as follows:

> (a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, enter an order of restitution pursuant to section 3556, place him on probation, or commit him to official detention. * * *
>
> * * * * *
>
> (c) The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—
>
> (1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—
>
> (A) the date when the juvenile becomes twenty-one years old; or
>
> (B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult; or

> (2) in the case of a juvenile who is between eighteen and twenty-one years old—
>
> (A) who if convicted as an adult would be convicted of a Class A, B, or C felony, beyond five years; or
>
> (B) in any other case beyond the lesser of—
>
> (i) three years; or
>
> (ii) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult.
>
> Section 3624 is applicable to an order placing a juvenile under detention.

2. Section 3559 of Title 18 provides as follows:

> (a) Classification.—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—
>
> (1) life imprisonment, or if the maximum penalty is death, as a Class A felony;
>
> (2) twenty-five years or more, as a Class B felony;
>
> (3) less than twenty-five years but ten or more years, as a Class C felony;
>
> (4) less than ten years but five or more years, as a Class D felony;
>
> (5) less than five years but more than one year, as a Class E felony;
>
> (6) one year or less but more than six months, as a Class A misdemeanor;
>
> (7) six months or less but more than thirty days, as a Class B misdemeanor;
>
> (8) thirty days or less but more than five days, as a Class C misdemeanor;

(9) five days or less, or if no imprisonment is authorized, as an infraction.

(b) Effect of classification.—An offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

3. Section 3581 of Title 18 provides as follows:

(a) In general.—A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment.

(b) Authorized terms.—The authorized terms of imprisonment are—

(1) for a Class A felony, the duration of the defendant's life or any period of time;

(2) for a Class B felony, not more than twenty-five years;

(3) for a Class C felony, not more than twelve years;

(4) for a Class D felony, not more than six years;

(5) for a Class E felony, not more than three years;

(6) for a Class A misdemeanor, not more than one year;

(7) for a Class B misdemeanor, not more than six months;

(8) for a Class C misdemeanor, not more than thirty days; and

(9) for an infraction, not more than five days.

STATEMENT

1. On November 5, 1989, two-year-old La Tesha Mountain died on the Red Lake Indian Reservation as the result of injuries suffered when the car in which she was riding was struck from the rear by a stolen car driven by respondent. Respondent, a 16-year-old, had been drinking at a party on the reservation and thereafter stole the car that was involved in the accident. Pet. App. 2a, 15a-16a.

2. Following a bench trial, the district court found that respondent stole the car, that he drove the car recklessly while he was intoxicated, that he caused La Tesha's death, and that his conduct constituted involuntary manslaughter, in violation of 18 U.S.C. 1112(a). The court found respondent to be a juvenile delinquent under 18 U.S.C. 5031. Pet. App. 15a-16a.

At sentencing respondent sought leniency. Because the Sentencing Guidelines do not apply to juvenile delinquency proceedings, respondent neither argued that the Sentencing Guidelines applied to his offense, nor urged the court to limit his term of commitment to the presumptive sentencing range set by the Sentencing Guidelines. 1/24/90 Tr. 5-7. The government urged the court to impose the maximum statutory penalty of three years' confinement. *Id.* at 7-8. See 18 U.S.C. 1112(a). After weighing the sentencing options and the circumstances of the crime, as well as the juvenile facilities available for detention, the court committed respondent for a term of three years and recommended that he be sent to the Missouri River Adolescent Center in Chamberlain, South Dakota. 1/24/90 Tr. 8-11.

3. Respondent appealed. The court of appeals upheld the finding of delinquency, but vacated the sen-

tence and remanded the case for resentencing. Pet. App. 1a-14a. Although the 36-month sentence that respondent received was within the period of imprisonment authorized by statute, the court held that the sentence exceeded the maximum period of confinement that can be imposed on a juvenile delinquent under 18 U.S.C. 5037(c)(1)(B). That statute provides in pertinent part that the sentence imposed on a juvenile may not extend beyond "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." Pet. App. 3a-14a.

The court acknowledged that the Sentencing Guidelines do not apply to individuals sentenced as juvenile delinquents under 18 U.S.C. 5037, Pet. App. 6a, but nevertheless concluded that "[u]sing the sentencing guidelines to fix the maximum sentence a juvenile delinquent could receive would serve as a guide to courts to eliminate unwarranted disparity between juvenile and adult sentences." *Ibid.* The court also determined that the legislative history of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976, supported that conclusion because it showed that "Congress did not intend the real time served by juvenile offenders to exceed the real time that would be served by adults convicted of similar crimes." Pet. App. 7a-8a. Finally, the court invoked the rule of lenity, stating that the rule "favors the statutory construction that yields the shorter sentence." *Id.* at 12a. As the court summarized: "We hold that the phrase 'maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult' prohibits a court from sentencing a juvenile to a term of imprisonment greater than the juvenile could have received had he been sentenced as an adult under the sentencing guidelines." *Id.* at 12a-13a.

SUMMARY OF ARGUMENT

A. By its terms, the governing statute resolves the issue in this case. The Juvenile Delinquency Act limits the sentence that can be imposed on a juvenile to "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." 18 U.S.C. 5037(c)(1)(B), (c)(2)(B)(ii). The pivotal phrase in Section 5037 —"maximum term of imprisonment"—refers to the statutory maximum term, not the maximum sentence that could have been imposed under the Sentencing Guidelines. Congress, not the Sentencing Commission, has power to "authorize" imprisonment as punishment for a crime. The Sentencing Guidelines do not "authorize" any punishment to be imposed for an offense, let alone the "maximum term of imprisonment." Instead, the Guidelines define ranges of presumptive sentences for categories of offenses and offenders that are within statutory limits.

The version of Section 5037 that was in effect prior to the Comprehensive Crime Control Act of 1984 provided that a juvenile offender could be sentenced to "the maximum term which could have been imposed on an adult convicted of the same offense." 18 U.S.C. 5037(b) (1982). That statute clearly referred to the maximum statutory penalty to which an adult offender would be exposed, and the 1984 amendment to the statute did not change the statute in that regard; the pre-1984 version of the statute and the current version both refer to the maximum term of confinement that a court may im-

pose, not to the (usually lesser) sentence that would have been handed down in fact. In addition, in the portion of the 1984 Act that adopted a new offense classification system, Congress defined "the maximum term of imprisonment" as "the term authorized by the law describing the offense." 18 U.S.C. 3559(b). Since Congress is presumed to give terms the same meaning throughout a statute, the phrase "maximum term of imprisonment" should have the same meaning in Section 5037(c)(1)(B) that it has in Section 3559(b).

The court of appeals concluded that a 1986 amendment to the Comprehensive Crime Control Act of 1984 revealed that Congress had rejected establishing statutory maximum sentences as the maximum terms of imprisonment juvenile delinquents could receive. The court misread the 1986 amendment. The purpose of that amendment was to ensure that juveniles would not be subject to a more severe statutory punishment than adults because of the unintended effect of unrelated sections of the 1984 Act. The 1986 amendment was not designed to provide a lower ceiling for juvenile offenders than for adult criminals.

B. The Eighth Circuit was concerned that, because the Sentencing Guidelines do not apply to juvenile adjudications, construing the "maximum punishment" clause to refer to the maximum statutory punishment would mean that juveniles could receive longer sentences than adult offenders. That concern is misplaced. The Sentencing Guidelines limit courts' sentencing discretion for adult offenders, but they do so in both directions—upward and downward—and

they do not affect the maximum punishment that can be imposed under the statute of conviction. Thus, a juvenile committed under Section 5037 is not necessarily in a worse position than an adult sentenced under the Sentencing Guidelines. In any event, because juvenile offenders are detained for different reasons, in different settings, and under a different criminal justice system than adult offenders, there is no inherent inequity in providing different periods of detention for juvenile offenders than for adult criminals.

C. The rule of lenity does not support the court of appeals' judgment in this case. That rule comes into play only if the statute is insolubly ambiguous. Section 5037 is not ambiguous at all. The reference to the maximum term of imprisonment that can be imposed on an adult clearly refers to the statutory maximum penalty, so there is no need to consult the rule of lenity as a tool of construction.

ARGUMENT

THE "MAXIMUM TERM OF IMPRISONMENT" TO WHICH A JUVENILE IS SUBJECT UNDER THE JUVENILE DELINQUENCY ACT IS THE MAXIMUM TERM OF CONFINEMENT AUTHORIZED BY THE STATUTE DEFINING THE OFFENSE

A. The "Maximum Term Of Imprisonment" In 18 U.S.C. 5037(c)(1)(B) Refers To The Maximum Term Of Imprisonment Authorized By Statute

Section 5037(c) sets the limit on the court's authority to sentence juvenile offenders to official detention. For juveniles under the age of 18, the statute provides that the juvenile may not be detained beyond his twenty-first birthday, 18 U.S.C. 5037 (c)(1)(A), and in any event may not be given a sentence of detention that is greater than "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult," 18 U.S.C. 5037(c)(1)(B). Persons between the ages of 18 and 21 prosecuted for offenses committed while they were juveniles may be sentenced to a term of five years' official detention if convicted of a Class A, B, or C felony. 18 U.S.C. 5037 (C)(2)(A) (incorporating 18 U.S.C. 3559(a)). When convicted of any other offense, such persons may be sentenced to a term of official detention of up to three years or equal to "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult," whichever is less. 18 U.S.C. 5037(c)(2)(B).

The court of appeals acknowledged that the Sentencing Guidelines do not apply to juvenile commitment decisions. See Pet. App. 6a.[1] Nonetheless, the

[1] Congress made that point clear in the Comprehensive Crime Control Act of 1984. See *United States* v. *Marco L.*, 868 F.2d 1121, 1124 (9th Cir.), cert. denied, 493 U.S. 956 (1989). Section 5037(a) of the Juvenile Delinquency Act, which was amended as part of the 1984 statute, provides that a district court in a juvenile proceeding should "consider any pertinent policy statements" promulgated by the Sentencing Commission, but it does not make the Sentencing Guidelines directly applicable to juvenile proceedings. See S. Rep. No. 225, 98th Cong., 2d Sess. 163-167 (1983) (discussing the difference between Sentencing Guidelines and Policy Statements issued by the Sentencing Commission). Moreover, 28 U.S.C. 995(a)(19), also enacted as part of the 1984 statute, directs the Sentencing Commission to "study the feasibility of developing guidelines for the disposition of juvenile delinquents," which makes it clear that Congress did not regard the Guidelines in their current form as applicable to juvenile proceedings. Finally, the Sentencing Commission recently made this point expressly in a proposed amendment to Sentencing Guidelines § 5H1.1 (Policy Statement). See 56 Fed. Reg. 22,779 (1991) ("The Guidelines are not applicable to a person sentenced as a juvenile delinquent under the provisions of 18 U.S.C. 5037."). The Sentencing Commission has only recently begun to consider whether it would be feasible to create Sentencing Guidelines for juvenile commitment proceedings.

court's ruling in effect tied juvenile sentencing to the Sentencing Guidelines, since the court held that the sentence to which a similarly situated adult offender would be subject under the Sentencing Guidelines is the "maximum term of imprisonment" that may be imposed on a juvenile offender under Section 5037 (c)(1)(B). That interpretation of Section 5037 could be correct only if the Sentencing Guidelines "authorized" the "maximum term of imprisonment" that may be imposed on an adult criminal. In fact, however, the Guidelines do not "authorize" any punishment to be imposed for an offense, let alone the "maximum term of imprisonment."

1. *Only statutes that affix a penalty to prohibited conduct can "authorize" a term of imprisonment as the punishment for a crime*

Historically, the federal government used a system of indeterminate sentencing as the principal method for punishing offenders. Statutes establishing the penalties typically gave the trial courts broad discretion to decide whether an offender should be imprisoned and for how long, and parole laws authorized correctional officials to release a prisoner before the expiration of the sentence imposed by the judge. *Mistretta* v. *United States*, 488 U.S. 361, 363-365 (1989). "Thus, under the indeterminate-sentence system, Congress defined the maximum, the judge imposed a sentence within the statutory range (which he could usually replace with probation), and the Executive Branch's parole official eventually determined the actual duration of imprisonment." *Id.* at 365.

The role played by courts and correctional officials, however, was and still is subservient to that of Congress. An elementary principle of federal criminal law is that a person can be imprisoned as a punishment for a crime only if Congress has authorized that penalty for his offense. As this Court explained in *Ex parte United States*, 242 U.S. 27, 42 (1916), "the authority to define and fix the punishment for crime is legislative." See also *United States* v. *Evans*, 333 U.S. 483 (1948) (holding that no term of imprisonment can be imposed for conduct prohibited by a federal law that did not also authorize imprisonment to be imposed as the penalty for such conduct); *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) ("the power of punishment is vested in the legislative, not the judicial department"); *Whalen* v. *United States*, 445 U.S. 684, 689 (1980) (stating the "basic principle that within our federal constitutional framework the legislative power, including the power to define criminal offenses and to prescribe the punishments to be imposed upon those found guilty of them, resides wholly with the Congress"); *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32 (1812).

Over time, Congress became disenchanted with the rehabilitative theory that underlay the indeterminate sentencing system, and it became concerned with the sentencing disparities that that system produced. As a result, Congress adopted a "guidelines" sentencing system. Congress chartered the United States Sentencing Commission and directed it to adopt a comprehensive system of guidelines to channel the courts' sentencing discretion. *Burns* v. *United States*, 111 S. Ct. 2182, 2184 (1991); *Mistretta*, 488 U.S. at 367-370.

At the same time, Congress did not give the Sentencing Commission the "authority" to define punishments or to modify an offender's "maximum term of imprisonment" in any way; Congress reserved that power for itself. The Commission's task was simply to adopt Guidelines defining ranges of presumptive sentences for categories of offenses and offenders; those Guidelines were required to be within the limits set by existing laws defining the punishment for particular offenses. 28 U.S.C. 991, 994(a), and (b). As this Court recognized in *Mistretta*, 488 U.S. at 374-375, "Congress instructed the Commission that these sentencing ranges must be consistent with pertinent provisions of Title 18 of the United States Code and could not include sentences in excess of the statutory maxima." The Sentencing Guidelines, accordingly,

neither convey nor reflect any sentencing "authority"; instead, they are limitations on the sentencing authority courts possess by virtue of the law authorizing the imprisonment of a convicted offender.

In holding that "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult," 18 U.S.C. 5037 (c)(1)(B), is the sentence to which an adult would be subject under the Sentencing Guidelines, the Eighth Circuit never considered the meaning of the term "authorized" in Section 5037. In fact, the court of appeals did not mention that term at all. Instead, it concluded that "[t]he phrase 'if *the juvenile* had been tried and convicted as an adult' suggests that the sentencing court should focus on the actual maximum sentence the particular juvenile in question would have been subject to but for his age, considering those individualized, subjective factors that would be relevant to sentencing the same individual as an adult." Pet. App. 5a. That conclusion, however, is clearly mistaken.

Section 5037(c)(1)(B) does not refer to the sentence that probably would have been imposed if the juvenile had been tried and convicted as an adult. Instead, the statute uses the clause "the maximum term of imprisonment that would be *authorized* if the juvenile had been tried and convicted as an adult" (emphasis added). That choice of terms is significant because, as explained above, only a statute, not the Sentencing Guidelines, can authorize a term of imprisonment as the punishment for crime. Because the "authority" to imprison an offender stems from the statute defining the offense and authorizing imprisonment as a penalty for a crime, the "maximum punishment" clause in 18 U.S.C. 5037

(c)(1)(B) refers to the maximum term of imprisonment authorized in the law defining the offense, not the sentence that would have been imposed on an adult under the Sentencing Guidelines.

2. The Comprehensive Crime Control Act of 1984 uses the phrase "maximum term of imprisonment" to refer to the maximum term of confinement authorized by statute

a. Before 1984, the Juvenile Delinquency Act provided that a district court could sentence a juvenile under the age of 19 to commitment for a period not to extend beyond his twenty-first birthday or "the maximum term which could have been imposed on an adult convicted of the same offense, whichever is sooner." 18 U.S.C. 5037(b) (1982).[2] Under that statute, there was no question that the "maximum term which could have been imposed on an adult convicted of the same offense" referred to the maximum penalty set forth in the applicable criminal statute. The Sentencing Guidelines were not in effect prior to November 1, 1987, so the only restrictions on a court's sentencing discretion were the statutory maximum and minimum sentences.

In amending the Juvenile Delinquency Act in 1984, Congress made a number of changes in the statute, but it kept the sentencing provisions largely the same. In place of the reference to the "maximum term which could have been imposed on an adult convicted of the same offense," the Congress referred to "the maximum term of imprisonment that would

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[2] A juvenile over the age of 19 could be committed for a period not to exceed "the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense." 18 U.S.C. 5037(b) (1982).

be authorized by [18 U.S.C.] 3581(b) if the juvenile had been tried and convicted as an adult." 18 U.S.C. 5037(c)(1)(B), (c)(2)(B)(ii) (Supp. II 1984).

Nothing in the text or legislative history of the 1984 statute suggests that the use of the phrase "the maximum term of imprisonment that would be authorized [by statute]" in place of the phrase "the maximum term of imprisonment which could have been imposed" was meant to change the maximum possible penalty for juvenile offenders by limiting it to the sentence to which an adult would be subject under the Sentencing Guidelines. In fact, the reference to 18 U.S.C. 3581(b), which sets forth the authorized statutory maximum terms of imprisonment for various offenses, makes it clear beyond dispute that the reference to "the maximum term of imprisonment that would be authorized" was meant to refer to the statutory maximums, not to the lower range of penalties established by the Sentencing Commission.

b. There is another clear textual indication in the 1984 Act that the reference to the maximum authorized term in Section 5037 of the 1984 Act was meant to refer to the maximum term authorized by the applicable criminal statute, as had been the case under pre-1984 law. A new feature adopted by the 1984 Act was a classification system that would be used in future legislation to rank federal offenses according to their relative seriousness. Felonies would be categorized from Class A to E, misdemeanors would be categorized from Class A to C, and the remaining crimes would be listed as infractions. 18 U.S.C. 3559(a)(1)-(9). The grading system was designed to enable Congress to define the maximum term of imprisonment, the maximum fine, the availability and

maximum term of probation, and the maximum term of supervised release simply by specifying the grade of a particular offense. S. Rep. No. 225, 98th Cong., 2d Sess. 51, 86-88 (1983). See 18 U.S.C. 3561(a) (probation), 3571(b) (fines), 3581(b) (imprisonment), 3583(b) (supervised release).

To avoid any misunderstanding about the effect of the classification system on existing laws, Congress provided that for offenses not specifically classified by a letter grade in the section defining the offense, "the maximum term of imprisonment is the term authorized by the law describing the offense," not by the new grading scheme. 18 U.S.C. 3559(b). Congress therefore was quite explicit in providing that the "maximum term of imprisonment" authorized for an adult offender is the maximum sentence set forth in the statutory penalty provision, not the top of the presumptive sentencing range established by the Sentencing Guidelines. See S. Rep. No. 225, *supra*, at 51, 114.[3]

The definition given to the phrase "maximum term of imprisonment" in Section 3559(b) is significant because Congress in the Comprehensive Crime Control Act of 1984 used that phrase in both Section 3559(b) and Section 5037. See Pub. L. No. 98-473, §§ 212, 214, 98 Stat. 1991-1992, 2013-2014. Because Congress is presumed to give a particular term the same meaning throughout a statute, see, *e.g.*, *Sullivan* v. *Stroop*, 110 S. Ct. 2499, 2504 (1990), the reference to "the maximum term of imprisonment" should carry the same meaning in Section 5037

[3] In other portions of Title 18 as well, the phrase "maximum term of imprisonment" is invariably used to mean the maximum penalty authorized by statute. See, *e.g.*, 18 U.S.C. 3, 373, 3142(e), 3156(a)(3).

(c)(1)(B) that it does in Section 3559(b). As the Ninth Circuit concluded in *United States* v. *Marco L.*, 868 F.2d 1121, 1124, cert. denied, 493 U.S. 956 (1989), the use of the same language in Sections 3559 and 5037 is further evidence that the "maximum term of imprisonment" that may be imposed under Section 5037(c)(1)(B) on a juvenile delinquent is the maximum period of confinement set forth in the statute describing the offense.

c. In 1986, Congress amended Section 5037(c) by deleting the phrase "by section 3581(b)" immediately following the phrase "maximum term of imprisonment that would be authorized." Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 21(a)(2), 100 Stat. 3596. Referring to the 1986 amendment, the court of appeals in this case concluded that Congress "reconsidered and rejected establishing * * * statutory maximum sentences as the maximum terms of imprisonment juvenile delinquents could receive." Pet. App. 7a n.1. In drawing that conclusion, the court misread the 1986 amendment.

The principal purpose of the 1986 statute, as its title indicates, was to correct technical errors in the Criminal Code generated by the many changes made by the Comprehensive Crime Control Act of 1984. The amendment to Section 5037 was meant to ensure that juveniles would not be exposed to greater maximum statutory penalties than adults for the same offense, not to provide a lower statutory ceiling for juvenile offenders than for adult criminals. See S. Rep. No. 278, 99th Cong., 2d Sess. 3 (1986) ("Section 17 [of the bill that became the 1986 Act] makes clear that juvenile sentences are to be of equal length as those for adult offenders committing the same

crime, * * *."); 131 Cong. Rec. 14,177 (1985) (section-by-section analysis of S. 1236) ("Because of the effect of 18 U.S.C. § 3559(b)(2) [(Supp. II 1984)], deleting the reference to section 3581(b) will tie the maximum sentence for juveniles to the maximum sentence for adults, rather than making juvenile sentences more severe than adult sentences.").

Congress's apparent concern was that the reference to Section 3581(b) might lead a court to conclude that the penalties for a particular ungraded offense would be those listed in Section 3581(b), rather than those listed in the statute describing the offense. The problem could arise as follows: suppose a juvenile was convicted of committing an offense that carried a maximum penalty of five years' imprisonment but was not specifically assigned a letter grade in the statute defining the offense. Under 18 U.S.C. 3559(a)(1)(D) (Supp. II 1984), the offense would be characterized as a Class D felony. Section 3581(b) provides that, in the case of all Class D felonies, the maximum penalty is six years' imprisonment. That provision would appear to expose the defendant to a six-year sentence rather than just a five-year sentence as provided in the statute defining the offense. Section 3559(b), however, states that in the case of a felony that is not specifically classified by a letter grade in the section defining the offense, the maximum penalty is the one authorized by the statute describing the offense. Section 3559(b) therefore has the effect of overriding Section 3581(b) with respect to ungraded offenses, so that a felony carrying a five-year maximum that is not expressly given a letter grade in the section defining the offense can give rise to a maximum of only five years' imprisonment.

The problem with the 1984 version of Section 5037, which contained an express reference to Section 3581(b), is that the reference to Section 3581(b) could be read to displace Section 3559(b) and make the penalties in Section 3581(b) applicable even for crimes not expressly graded in the section describing the offense. That would produce, in some cases at least, a greater maximum statutory penalty for juveniles than for adults who commit the same offense. For that reason, Congress had to remove the reference to Section 3581(b) in order to ensure that the maximum penalty to which a juvenile would be exposed would be the same as the statutory maximum penalty that would apply to an adult who committed the same offense.[4] The 1986 amendment to Section

[4] A footnote in the House committee report states in part that the 1986 amendment to Section 5037 "delete[s] references to 18 U.S.C. 3581(b) so that juvenile offenders will not be subjected to the same maximum penalties assessed for adult offenders." H.R. Rep. No. 797, 99th Cong., 2d Sess. 21 n.3 (1986). That statement is not accompanied by any explanation of how the amendment would have the described effect. Moreover, that single statement appears to be contradicted by other portions of the legislative history, including other portions of the House report. The Senate materials quoted in the text make clear that the purpose of the 1986 amendment was not to make the maximum penalties for juvenile and adult offenders different, but to ensure that they would continue to be the same. There are two features of the House report that support that interpretation. First, the House report indicates that the amendment to Section 5037 merely "delet[es] an incorrect cross-reference," *id.* at 21, which suggests that no substantive change was intended. Second, the footnote addressing Section 5037 refers to a "parallel amendment" made by a different section of the same bill, *id.* at 21 n.3, where the bill repealed a reference to the Young Adult Offenders Act; the effect of that "parallel amendment" was to ensure that young offenders would be subject to the same maximum sentences as adult offenders, not longer ones. See *id.* at 17. The reference to the section repealing the Young Offenders Act therefore suggests that the change in Section 5037 was intended to have the parallel effect of ensuring that the maximum statutory penalties for juveniles would not be longer than for adults.

5037 therefore does not support the court of appeals' conclusion that Congress omitted the reference to Section 3581(b) in order to tie the maximum juvenile penalties to the Sentencing Guidelines rather than to the maximum penalties set forth in the applicable criminal statutes.

B. The Eighth Circuit's Concern With Avoiding Disparate Terms Of Imprisonment For Juvenile And Adult Offenders Does Not Support The Court's Interpretation Of Section 5037(c)(1)(B)

The Eighth Circuit reasoned that, because a principal purpose of the Comprehensive Crime Control Act of 1984 was to eliminate unwarranted sentencing disparities, Section 5037(c)(1)(B) should be read to limit the maximum sentence that a juvenile can receive to the maximum term of confinement in the Sentencing Guidelines. Otherwise, the court reasoned, juveniles could be sentenced more severely than adults, which would undercut the goals of the Act. Pet. App. 7a-11a. Respondent endorses that analysis. Br. in Opp. 15-19.

The premise of the Eighth Circuit's analysis is mistaken. Interpreting the "maximum punishment" clause as referring to the statutory maximum punishment would not necessarily result in harsher penalties for juveniles. Juveniles and adults who commit involuntary manslaughter can both be sentenced to three years' confinement. The difference between the two is that adult offenders are subject to the Sentenc-

ing Guidelines. Thus, in order to confine an adult offender for three years, the district court might need to depart upward from the Guidelines range.[5] By the same token, however, a district court would need to depart downward in order to sentence an adult convicted of manslaughter to a term of imprisonment below the Guidelines range, while a court could impose the same sentence on a juvenile without the need for a departure. The Sentencing Guidelines limit the discretion with respect to adult offenders that the district courts previously enjoyed, but they do so in *both* directions—upward and downward—without affecting the maximum punishment that can be imposed under the statute of conviction. Thus, a juvenile committed under Section 5037 is not necessarily in a worse position than an adult sentenced under the Sentencing Guidelines.

In fact, a juvenile committed under Section 5037 is generally in a *better* position than an adult sentenced under the Sentencing Guidelines. A juvenile under the age of 18 may not be detained past the date of his twenty-first birthday, and a juvenile between 18 and 21 may not be confined for more than three years for most crimes, even if the period of incarceration for an adult exceeds that term. 18 U.S.C. 5037(c)(1)(A), (c)(2)(B). Moreover, every adult sentenced to imprisonment may be given a term of supervised release to follow the period of incarceration, and every adult imprisoned for at least one

[5] The Sentencing Guidelines' base offense level for involuntary manslaughter resulting from drunken driving (*i.e.*, "reckless" conduct) is 14. Sentencing Guidelines § 2A1.4 (a)(2); *Guidelines Manual* Application Note No. 1, at 2.4-2.5. For an offender who falls into the lowest criminal history category (Category I), the Guidelines sentence would be 15-21 months' imprisonment. *Id.* at 5.2, Sentencing Table.

year is required to be given a term of supervised release. See 18 U.S.C. 3583(a); Sentencing Guidelines § 5D1.1. By contrast, a juvenile committed under Section 5037 is not subject to any term of supervised release, regardless of the length of his confinement. 18 U.S.C. 5037(b) and (c). Thus, juveniles who are committed under Section 5037(c)(1)(B) will often be subject to shorter total periods of supervision than adults who are sentenced under the Sentencing Guidelines.[6]

In any event, it would not be inequitable or unconstitutional for a juvenile to be committed for a longer period of confinement than an adult convicted of the same offense. Juvenile offenders are detained for different reasons, in different settings, and under a different criminal justice system than adult offenders.

Because of the rehabilitative purposes and programs for offenders formerly sentenced under the Youth Corrections Act, 18 U.S.C. 5005-5024 (1982) (repealed by the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, § 218(a)(8), 98 Stat. 2027), the federal courts consistently held that it was not irrational, and therefore did not violate the Due Process Clause, for an offender sentenced under the Act to be subjected to a period of custody and post-release supervision in excess of the maximum sentence imposable on an adult for the same offense. See *United States* v. *Donelson*, 695 F.2d 583, 588 (D.C. Cir. 1982) (Scalia, J.); *Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962) (Burger, J.) ("the basic theory of the Act is rehabilitative and in a sense

[6] The President's crime bill, S. 1241, § 105, 102d Cong., 1st Sess. (1991), would change current law by subjecting juveniles to supervised release. The bill has been passed by the Senate and is pending before the House.

this rehabilitation may be regarded as comprising the *quid pro quo* for a longer confinement but under different conditions and terms than a defendant would undergo in an ordinary prison").[7] The rationale of those decisions is applicable here as well. As was true in the case of the Youth Corrections Act, the purpose of the Juvenile Delinquency Act is to rehabilitate, not to punish, errant youths, and the government provides juveniles with special treatment toward that goal. See, *e.g.*, 18 U.S.C. 5035, 5039 (ensuring that juveniles are not housed with adult prisoners and guaranteeing juveniles counseling, education, and training); S. Rep. No. 1989, 75th Cong., 3d Sess. 1 (1938); H.R. Rep. No. 2617, 75th Cong., 3d Sess. 1 (1938); S. Rep. No. 1011, 93d Cong., 2d Sess. 22 (1974); *United States* v. *Brian N.*, 900 F.2d 218, 220 (10th Cir. 1990); *In re Sealed Case (Juvenile Transfer)*, 893 F.2d 363, 367 (D.C. Cir. 1990);

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[7] See also, *e.g.*, *United States* v. *Lowery*, 726 F.2d 474, 477-478 (9th Cir. 1983), cert. denied, 469 U.S. 837 (1984); *United States* v. *Van Lufkins*, 676 F.2d 1189, 1193-1194 (8th Cir. 1982); *Johnson* v. *United States*, 374 F.2d 966, 967 (4th Cir. 1967); *Brisco* v. *United States*, 368 F.2d 214, 215 (3d Cir. 1966); *Rogers* v. *United States*, 326 F.2d 56, 57 (10th Cir. 1963); *Cunningham* v. *United States*, 256 F.2d 467, 472-473 (5th Cir. 1958). Those decisions correctly apply the rational basis standard to evaluate the different treatment accorded juvenile and adult offenders. See *Chapman* v. *United States*, 111 S. Ct. 1919, 1927-1928 (1991) (rejecting the defendant's claim that heightened scrutiny is necessary to evaluate distinctions drawn by a sentencing statute, on the ground that the defendant has a liberty interest at stake; applying the rational basis standard instead); *Gregory* v. *Ashcroft*, No. 90-50 (June 20, 1991), slip op. 16-17 (holding that age is not a suspect classification and applying a rational basis standard).

United States v. *Frasquillo-Zamosa*, 626 F.2d 99, 101 (9th Cir.), cert. denied, 449 U.S. 987 (1980).

Accordingly, the Eighth Circuit erred in believing that Section 5037(c)(1)(B) must be read to ensure that juvenile offenders are not subject to confinement for longer terms than adult criminals. That concern therefore does not provide a basis for reading the text of Section 5037(c)(1)(B) to limit the sentence that can be imposed on juveniles to those prescribed for adults in the Sentencing Guidelines.

C. The Rule Of Lenity Does Not Support The Court Of Appeals' Analysis In This Case

Finally, the Eighth Circuit invoked the rule of lenity to support its reading of Section 5037(c)(1)(B). Pet. App. 11a-12a. That canon of construction, however, does not justify the outcome reached by the court of appeals in this case.

The rule of lenity is not applicable unless there is a "grievous ambiguity or uncertainty in the language and structure of the Act," *Huddleston* v. *United States*, 415 U.S. 814, 831 (1974), such that even "[a]fter [a court has] 'seize[d] every thing from which aid can be derived * * *' [it is still] left with an ambiguous statute." *United States* v. *Bass*, 404 U.S. 336, 347 (1971) (quoting *United States* v. *Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805)). Lenity "only serves as an aid for resolving an ambiguity; it is not to be used to beget one. * * * The rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers." *Callanan* v. *United States*, 364 U.S. 587, 596 (1961). See also, *e.g.*, *Chapman* v. *United States*, 111 S. Ct. 1919, 1926 (1991). This Court has "al-

ways reserved lenity for those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to" the standard tools of statutory interpretation. *Moskal* v. *United States*, 111 S. Ct. 461, 465 (1990).

The rule of lenity does not apply here. The text of the Juvenile Delinquency Act and general principles of federal criminal law show that the "maximum punishment" clause in 18 U.S.C. 5037(c)(1)(B) refers to the maximum statutory penalty; nothing in the language of Section 5037 clearly expresses the contrary meaning; and "[a] straightforward reading of [that statute] does not produce a result so absurd or glaringly unjust as to raise a reasonable doubt about Congress's intent." *Chapman* v. *United States*, 111 S. Ct. at 1926-1927 (citations and internal quotation marks omitted). In these circumstances, there is no occasion to resort to the rule of lenity.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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